

The Customer's attention is particularly drawn to the provisions of clause 8.

1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Conditions: these terms and conditions as amended from time to time in accordance with clause 12.6.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with the Order and these Conditions.

Customer: the person or firm who purchases Services from the Supplier.

Deliverables: the deliverables set out in the Order produced by the Supplier for the Customer.

Design Specifications: calculations, verification and validation of the designs, structural and any other information and requirements provided or specified by or on behalf of the Customer or any third party.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the order form for Services as attached to these Conditions.

Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Order.

Supplier: Caddology Limited registered in England and Wales with company number 06597620.

Supplier Materials: has the meaning set out in clause 4.1(d).

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to writing or written includes faxes and e-mails.

2. BASIS OF CONTRACT

- 2.1 The Contract shall come into existence upon the signing by both parties of the Order.
- 2.2 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.3 Any samples, drawings, descriptive matter or advertising issued or published by the Supplier, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. SUPPLY OF SERVICES

3.1 The Supplier shall supply the Services to the Customer in accordance with the Order in all material respects.

3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

3.5 The scope of the Services expressly excludes the Design Specifications in relation to which the Customer is fully liable and responsible.

3.6 Nothing in the Contract shall prevent the Supplier from being engaged, concerned or having any financial interest in any capacity in any other business, trade, profession or occupation provided that such activity does not cause a breach of any of the Supplier's obligations under the Contract.

4. CUSTOMER'S OBLIGATIONS

4.1 The Customer shall:

- (a) ensure that any information it provides in the Order, in any document referred to therein, in any other technical briefs and instructions or as the Supplier may reasonably require in order to supply the Services is complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- (d) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
- (e) carry out the obligations detailed in the Order.

4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default (including, for clarity, any Charges incurred that would have been due if the Customer Default had not occurred).

5. CHARGES AND PAYMENT

- 5.1 The Charges for the Services shall be on a time and materials basis and calculated as set out in the Order.
- 5.2 The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 5.3 The Supplier shall invoice the Customer as detailed on the Order.
- 5.4 The Customer shall pay each invoice submitted by the Supplier in accordance with the Order in full and in cleared funds to a bank account nominated in writing by the Supplier. Time for payment shall be of the essence of the Contract.
- 5.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**).
- 5.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per cent per annum above Barclays Bank base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 5.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 Ownership of all Intellectual Property Rights which were not specifically created for use or intended use in relation to the performance of the Services (**Background IPR**) shall remain with the party providing the Background IPR or, where applicable, the third party from whom that party's right to use the Background IPR has derived.
- 6.2 Ownership of all Intellectual Property Rights which are derived from or arise as a result of the performance of the Services in whatever format (**Foreground IPR**) shall vest in the Supplier.
- 6.3 Where the Customer provides any Background IPR to the Supplier for use in relation to the performance of the Services it agrees to grant the Supplier, or to ensure that the third party owner of the Background IPR grants the Supplier, a non-exclusive licence to use the Background IPR for the purpose of performing the Services and publishing technical materials or examples as part of the Supplier's marketing, promotional and business development activities.
- 6.4 Subject to payment in full of the Charges, the Supplier shall grant the Customer: (i) a non-exclusive licence to use and exploit all Foreground IPR; and (ii) a non-exclusive licence to use and exploit all of the Background IPR provided by it which is freely licensable, comprised in the Deliverables and is necessary solely for the purpose of using or exploiting the Foreground IPR.

7. CONFIDENTIALITY AND DATA PROTECTION

- 7.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential

information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 6.1.1 shall survive termination of the Contract.

- 7.2 Each party shall, at its own expense, ensure that it complies with and assists the other party to comply with the requirements of all legislation and regulatory requirements in force from time to time in the UK relating to the use of personal data and the privacy of electronic communications, including (i) the Data Protection Act 2018 and any successor UK legislation, (ii) the retained EU law version of General Data Protection Regulation (*EU 2016/679*) (UK GDPR), and (iii) the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*).

8. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 8.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - fraud or fraudulent misrepresentation; or
 - breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 8.2 Subject to clause 8.1:
- the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Charges payable under the Contract.
- 8.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 8.4 The Customer acknowledges that the Supplier has no control over the Design Specifications or how the Customer implements the Deliverables or the Services in its systems or products and therefore the Supplier shall have no liability, whether in contract, tort, (including negligence) or otherwise, in relation to the Design Specifications or the use of the Deliverables or Services by the Customer or any other person, or the consequences of their use, or the failure by the Customer to obtain necessary licences and fulfil legal and regulatory requirements in relation to such use and the Customer shall indemnify the Supplier against all such liability and claims arising from such use.
- 8.5 This clause 8 shall survive termination of the Contract.

9. TERMINATION

- 9.1 Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party 2 months' written notice.
- 9.2 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 days of that party being notified in writing to do so;
 - the other party is unable to pay its debts as they fall due or has a receiver, administrator, administrative receiver or liquidator appointed or calls a

meeting of its creditors or ceases for any other reason to carry on the business or in the reasonable opinion of the other party any of these events appears likely.

9.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within 14 days after being notified in writing to do so.

9.4 Without limiting its other rights or remedies, the Supplier may suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause **Error! Reference source not found.**) or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

10. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication survive termination shall continue in full force and effect.

11. FORCE MAJEURE

11.1 Neither party will be liable to the other for any delay in the performance of (other than as to payment) or failure to fulfil its obligations under the Contract to the extent that any such delay or failure arises from causes beyond its control, including but not limited to fire, floods, acts of God, acts or regulations of any governmental or supranational authority, war, riot, strike, lockouts and industrial disputes.

12. GENERAL

12.1 Assignment and other dealings.

- (a) Neither party may assign, transfer, charge or otherwise seek to deal with any of its rights or obligations under this agreement without the prior written consent of the other party, such consent not to be unreasonably withheld.
- (b) The Supplier reserves the right to employ agents and sub-contractors though will remain liable to the Customer in respect of any Services provided by such agents and sub-contractors.

12.2 **Notices.** Notices must be served either personally or sent by prepaid registered post to the address of the other party given in the Contract or to any other address as the parties may have notified during the period of the Contract. Any notice sent by prepaid registered post will be deemed to have been delivered 48 hours after sending. Any notice served personally will be deemed to have been delivered at the time the notice is left at the proper address. A notice required to be given under the Contract shall not be validly served if sent by email.

12.3 **Severance.** If any court of competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

12.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

12.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

12.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Supplier.

12.8 **Governing law.** The Contract shall be subject to and governed by English law and any disputes arising from or under it, including in relation to its formation, shall be subject to the exclusive jurisdiction of the English courts.